

OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Lakeway Inn Conference Resort
Austin, TX
September 19, 2003

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The Board of Directors of the State Bar of Texas met in a regular session on September 19, 2003 at the Lakeway Inn Conference Resort in Austin, Texas. The meeting was called to order at approximately 9:00 a.m. by Chair Kim J. Askew, and the roll was called by Executive Director Antonio Alvarado. A quorum of voting Board members was present. Invocation was presented by Rev. Samuel D. Zumwalt, Senior Pastor, St. Martin's Evangelical Lutheran Church of Austin.

Present:

Board Members: Kim J. Askew, Fred E. Aurbach, D.D.S., H. Mack Barnhart, Blair A. Bisbey, Michael J. Black, Mina A. Brees, Ralph H. Brock, Russell G. Burwell III, Linda R. Butter, Ophelia F. Camina, Judge Jim Coronado, Jennifer G. Durbin, Michael A. Elliott, William D. Elliott, Kelly Frels, Roland Garcia, Jr., Tom Godbold, Terri L. Hagan, Guy N. Harrison, Pauline E. Higgins, Paula W. Hinton, John H. Hofmann, Jarvis V. Hollingsworth, Roland K. Johnson, John F. Landgraf, David R. McAtee, Melinda C. McMichael, M.D., S. Leon Mitchell, Mark N. Osborn, Jeffrey R. Parsons, Glenn A. Perry, Velva L. Price, Mickey R. Redwine, Vianei Lopez Robinson, Renato Santos, Jr., Charles W. Schwartz*, Mark A. Shank, Amy Dunn Taylor, Betsy Whitaker, Patricia J. Williams, James C. Winton, Marshall C. Wood

Liaisons*: Justice Michael H. Schneider, Judge Sharon Keller, Judge Walter S. Smith, Jr.

Section Representatives*: William H. Betts, Jr., Demetrius K. Bivins, Suzanne Mann Duvall, W. David East, Robert V. Gibson, Mark L. Murdock

Excused Absences:

Patricia O. Alvarez, W. Mike Baggett, Stephen C. Maxwell, W. Steven Steele, Andrew L. Strong; Liaisons Judge Molly M. Francis and Joette Furlough

(* = *nonvoting*)

I. SWEARING IN OF NEW MEMBER

Supreme Court Justice Michael H. Schneider administered the oath of office to public member Fred E. Aurbach, D.D.S., who had been appointed to serve after the June Board meeting. Chair Kim Askew presented the customary cufflinks set to Dr. Aurbach.

II. CONSENT AGENDA ITEMS

Upon motion made by Ophelia F. Camina and seconded by Pauline E. Higgins, the following items on the Consent Agenda were approved:

- A. Minutes of Board meeting conducted on *June 12, 2003*
- B. Ratification of actions taken at the following Executive Committee meetings:

August 1, 2003: Approval of minutes for the March 6, 2003 Executive Committee meeting.

September 2, 2003: Approval of minutes for the August 1, 2003 Executive Committee meeting. (Other action item regarding Executive Director - taken under Administration Committee report.)

C. Appointments to the following entities:

1. **2003-2004 Special Committee to Nominate ABA Delegates:**

Guy N. Harrison (Longview), Chair

(By President Whitaker)

James E. Coleman, Jr. (Dallas)
M. Colleen McHugh (Corpus Christi)
Brett A. Ringle (Dallas)
William B. Stanfill (Houston)

(By Chair Askew)

Dan M. Boulware (Cleburne)
Katrina Grider (Houston)
John Simpson (Lubbock)
Hon. Linda R. Yanez (Edinburg)

2. **College of the State Bar** – to complete Richard Cruz’s unexpired term through 2005:

E. Douglas McLeod (Galveston)

3. **Delegates and Alternates to the 2004 Fifth Circuit Judicial Conference:**

Delegates:

Guy N. Harrison
Charles W. Schwartz
Marshall C. Wood

Alternates:

Lynne Liberato
Vidal G. Martinez
David R. McAtee

Other Attendees:

Betsy Whitaker
Kelly Frels
Antonio Alvarado

4. **Law Focused Education, Inc.** – to complete Dean Brumley’s unexpired term through 2005:

George Rislov (TEA, Austin)

5. **State Bar Council of Chairs Committee** - *effective June/2003 through June/2004:*

Chair: Jason S. Coomer (Austin)
Vice-Chair: Steven Aleman (Austin)

6. **Texas Access to Justice Commission** - *effective June/2003 through June/2006:*

Daniel David Hu (Houston)

7. **Texas Real Estate Broker/Lawyer Joint Committee** – *effective September 1, 2003 through August 31, 2009:*

George A. Juarez (Laredo)
Jerome L. Prager (Dallas)

D. Section Requests:

1. Bylaw revisions for the State Bar Computer and Technology Section. **[See Exhibit A.]**
2. State Bar Administrative and Public Law Section request to increase dues from \$20 to \$25. **[See Exhibit B.]**
3. State Bar Animal Law Section request to increase dues from \$10 to \$20. **[See Exhibit C.]**

4. State Bar Juvenile Law Section request to hold its annual meeting and election of officers in conjunction with the section-sponsored seminar on February 18, 2004. [See Exhibit D.]
 5. Bylaw revisions for the State Bar Construction Law Section. [See Exhibit E.]
 6. Bylaw revisions for the State Bar Insurance Law Section. [See Exhibit F.]
- E. Purpose statement for Web Services Advisory Committee and constitution of it as a standing committee of the State Bar of Texas:
- Reviews the functionality and content of the TexasBar.com website and makes recommendations to the Board Technology Oversight Subcommittee and to State Bar staff for the purpose of (1) ensuring effective and efficient delivery over the Internet of services and information for attorneys and the public, and (2) monitoring and advising about opportunities for coordination and collaboration with other State Bar and Bar-related websites with the goal of expanding and enriching the overall menu of offerings for attorneys and the public.
- F. Grievance committee appointments by 2002-03 President Guy N. Harrison. [See Exhibit G.]
- G. Chair's referral of 2003 Annual Meeting Resolution by the State Bar Individual Rights and Responsibilities Section to the Board Legislative Policy Subcommittee. [See Exhibit H.]
- H. Resolutions honoring --
1. Supreme Court Justice and Mrs. Craig T. Enoch [See Exhibit I]
 2. 2003 Margaret Brent Honoree Charlye O. Farris [See Exhibit J.]
 3. State Bar Past President and Mrs. Travis D. Shelton [See Exhibit K.]
 4. SBOT Past President James B. Sales [See Exhibit L.]
 5. Texas Young Lawyers Association "Junior Judges" [See Exhibit M.]
 6. Dallas Bar Association – Successful Completion of the Belo Mansion Pavilion in the Arts District of Dallas [See Exhibit N.]
 7. Special Projects Department Director Diana Corbin [See Exhibit O.]

III. UPDATES

A. CHAIR OF THE BOARD: Chair Askew indicated that the resolutions approved on the Consent Agenda would be presented during the Board lunch to those in attendance: Supreme Court Justice and Mrs. Craig T. Enoch, Texas Young Lawyers Association ("Junior Judges" project), and Diana Corbin (retirement from State Bar staff after 30 years).

B. STATE BAR PRESIDENT: President Whitaker presented an overview of her visits to the ABA Annual Meeting, House of Delegates, Margaret Brent Awards Luncheon, Bar Leaders Conference, and the breakfast meeting with the Section Representatives. Whitaker stressed that the State Bar of Texas needs to take a leadership role in important issues.

IV. OTHER REPORTS

A. Technology Update: Technology Oversight Subcommittee Chair Mark Osborn presented a demonstration of the improved Bar website, including access to the online profiles filed by the attorneys. Osborn indicated that expectations are for the Bar to have a major impact on lawyers in their everyday practice and access to the State Bar. Expected implementation by 2005 includes online voting, e-commerce, referendum, online dues payment, and other electronic interface/integration (back office database) to facilitate accessibility of staff, attorneys and the public. Revisions to Board policy, prioritizing of projects, and evaluation of costs – all will have an impact on the recommendations made to the Board regarding technology projects. To date,

approximately 71,000 attorneys have submitted online profiles at a cost of \$92,000 versus \$164,000 had the profiles been submitted completely by paper. David Evans, Web Service Advisory Committee chair, stated that demand for internet projects is ongoing, and that the Bar needs to set priorities. The committee plans to deliver criteria path timetable of short term or longer-term projects.

B. Annual Meeting 2003 Update/Nominations & Elections: President-elect Kelly Frels indicated that recommendations are being implemented to downsize the annual meeting from three to two day meetings. Frels also reviewed the president-elect timetable and indicated that the Nominations & Elections Subcommittee would be reviewing proposed policy changes for the 2004 and 2005 election years.

C. Access to Justice/Legal Services to the Poor: Supreme Court Justice Harriet O'Neill talked about the vision for legal services, stating that resource development was a priority and that a long-term strategy was needed. Justice O'Neill indicated that the Access to Justice Commission was blindsided by the \$65 add-on fee and, while it is important to not interfere with local funding, it is necessary to consolidate, coordinate efforts and to draw clear lines of authority and establish specific goals. Justice O'Neill stated that vision is one thing; implementation is another, and the Texas Legislature will be asked for buy-in/commitment to some quantifiable, tangible goals. However, the commission does not want to approach the Legislature without a concrete plan. The commission will seek grants to help fund its \$27,000 Resource Development Project, to which the State Bar will be asked to contribute \$20,000.

Finance Subcommittee Chair William A. Elliott introduced for consideration funding for the Resource Development Project. **Upon motion by Roland Garcia, Jr., and properly seconded by Ophelia F. Camina, the request that the State Bar contribute \$20,000 to hire consultant Dennis Dorgan (St. Paul, MN) was approved.**

D. Discipline/CAAP Committee: Discipline/CAAP Committee Co-Chairs Mark A. Shank and Vianei Lopez Robinson and Chief Disciplinary Counsel Dawn Miller led the discussion regarding the proposed revision to the disciplinary rules, due to the Supreme Court by November 1, 2003 and for implementation by January 1, 2004. Shank stressed that the Bar was not writing the rules, but was collecting and distilling comments to submit a draft to the Supreme Court by its deadline. Specific changes were mandated by statute, and input had been solicited/received from all interested parties, including Board of Disciplinary Appeals, the Supreme Court Grievance Oversight Committee, Board members, and grievance committee chairs. A public hearing has been scheduled for October 15 at the Texas Law Center, and the proposed rules are available in the October edition of the *Texas Bar Journal* and on the Bar's website.

Two options were presented to the Board members for consideration, of which the committee recommended Option B: (A) Conditionally accept the new draft, allow the committee to continue working on the draft, call a special Board meeting for final approval; (B) conditionally accept the new draft, allow the committee to continue working on the draft and delegate authority/oversight to the Executive Committee, including the discretion to call a special Board meeting.

Terri L. Hagan moved adoption of Option B. The motion was seconded by Michael A. Elliott.

After spirited discussion on the pros and cons of both options, Mark N. Osborn offered an amendment that the Board approve the work of the committee to date instead of approving the recommended draft. The amendment was accepted by the movant, Terri L. Hagan. Upon the call for the oral vote, Chair Askew determined that a hand vote was necessary. The results was 25 for the motion as amended; 14 against. The motion as amended passed. [See Exhibit P.]

A recommendation was made that a flow chart be developed and distributed with the rules to help Board members and others understand the new proposals. Supreme Court Justice Michael H. Schneider indicated that the Bar was doing the Court a favor by coordinating the rewriting of the Rules.

E. Commission for Lawyer Discipline: Commission Chair Mark D. White gave a brief report, indicating that new commission members had been appointed, a review of the budget process was underway, and that as a standing committee of the State Bar, the commission was committed to working hand-in-hand with the Bar.

F. Finance Subcommittee: Finance Subcommittee Chair William D. Elliott presented a general overview of the Bar's financial condition, then presented several action items for consideration.

1. **Internal Auditor – Montemayor & Associates. Moved by Velva L. Price and seconded by Linda Butter, the motion passed. [See Exhibit Q.]**

2. **Sentry Management Company (Murphy Davis) as Outside Investment Advisor for the State Bar 2003-2004. Moved by Jennifer G. Durbin and seconded by Vianei Lopez Robinson, the motion passed. [See Exhibit R.]**

3. **Murphy Davis and University of North Texas Center for Public Management as Investment Trainers. Moved by Pauline E. Higgins and properly seconded, the motion passed. [See Exhibit S.]**

4 & 5. **Acceptance of Quarterly Investment Report for Quarter Ending May 31, 2003 and the Broker List for 2003-2004. Taken jointly, moved by Mina A. Brees and properly seconded, the motion passed. Note: Pauline Higgins abstained from this vote. [See Exhibits T & U.]**

G. Ad Hoc Committee to Select Minority Directors: Ad Hoc Committee Chair Ophelia F. Camina presented an overview of the timetable involved in the minority director selection process. Two slots will become vacant in 2004; and the committee must recommend four persons, from which President Betsy Whitaker will appoint the two new members to serve three-year terms.

H. Professional Development (Education) Subcommittee: Professional Development (Education) Subcommittee Chair Blair A. Bisbey presented a review of the new CLE products, projects, market share, and indicated that the Texas Bar CLE Department's primary purpose was not to be the main revenue producer for the Bar, but to provide quality CLE to Texas lawyers. Bisbey indicated that the State Bar commanded a 28.9% market share in 2003, while its closest competitor commanded only about 6%.

I. Administration Committee: Administration Committee Chair Jarvis V. Hollingsworth reported that the Bar had paid \$43,000 in liquidated damages to terminate the old Fort Worth lease, and that a new lease had been signed with Summit Towers to house the Fort Worth office at a cost of \$19 sq.ft./\$3,000 monthly expense. Space for the El Paso office had been leased at \$14 sq.ft./\$1,700 monthly expense. Hollingsworth also highlighted several cases from the litigation report that had been resolved and stated that one new case had been filed since the last report.

1. **Closed Session**: The Board of Directors met from 1:40 p.m. to 2:03 p.m. in closed session, as authorized by Texas Government Code, Section 551.074, for the purpose of discussing the evaluation, duties and compensation of the Executive Director and General Counsel.

(Open Session) Upon return to open session, Chair Askew announced that during the closed session, pursuant to Texas Government Code, Section 551.074, only items pertaining to the evaluation, duties and compensation of the Executive Director and General Counsel were discussed. No action was taken in closed session.

In open session, **Administration Committee Chair Hollingsworth moved that the Board approve a four percent increase in salary for Executive Director Antonio Alvarado plus up to \$10,000 for him and his spouse to attend an executive management program during the 2003-2004 Bar year. The motion passed.**

2. General Counsel Search Committee: Chair Askew indicated that a recommendation by the Search Committee would be made at the January 2004 Board meeting.

J. Policy Manual/Bar Refresher Subcommittee: Policy Manual/Bar Refresher Subcommittee Chair Mina A. Brees presented a review of the timeline, process, and substantive changes regarding the Board Policy Manual, including General Counsel selection criteria and performance review provision, nominations and campaign issues (internet, etc.), TXBarCLE reimbursement, MCLE and section issues, annual budget and budget committee membership.

K. Legal Services Subcommittee: Legal Services Subcommittee Chair Renato Santos, Jr., reported that Texas lawyers have already contributed \$1.18 million to legal services (\$80,000 more than last year). Santos indicated that distribution of the funds would be made, as approved by the Supreme Court, as follows: \$50,000 to ProBar, \$200,000 to the Texas Bar Foundation, and the balance to Texas Equal Access to Justice Foundation. Roland Garcia reported that a forum to bring all stakeholders together, including Justice Harriet O'Neill, in a "pro bono summit" to talk about the issues was being planned in the spring and would include the two standing Bar legal services committees, Texas Access to Justice Commission, Board Legal Services Committee, Texas Supreme Court, and Board leadership.

L. Appeals-Grant Review Subcommittee: In Appeals-Grant Review Subcommittee Chair W. Steven Steele's absence, Ralph H. Brock reported that the subcommittee had reviewed and approved for submission to the Texas Bar Foundation the following grant: "Hispanic Issues Section 25th Anniversary Project - \$15,000 (Sponsor: SB Hispanic Issues Section).

Regarding the appeal received by the Galveston County Bar Association (Jeff Kilgore), Brock indicated that the subcommittee had reviewed the State Bar MCLE Committee's recommendation to deny MCLE accreditation for "PowerPoint and Demonstrative Evidence for Attorneys" Seminar. **On behalf of the Appeals-Grant Review Subcommittee, Brock moved that the Board reverse the decision of the MCLE Committee. The motion passed.**

M. American Bar Association Update: Former State Bar President Richard Pena talked about the structure of the ABA and indicated that the association has 400,000 members and 538 delegates. One in every two lawyers in the nation is a member of the ABA. Pena stated that a goal is for every State Bar Board member to become a member of the ABA and for the Texas leaders to become ABA leaders. Pena talked about a few of the issues discussed during the August ABA Annual Meeting, including the confidentiality issue, Model Rules 1.6 and 1.13.

N. TYLA Update: TYLA President Marshall Wood thanked the Board for the resolution that was adopted during the meeting, and gave a great analogy about the TYLA's relationship with the Bar. Wood highlighted a few of the TYLA current projects and reported on several new projects that will be implemented during the 2003-04 Bar year.

O. Executive Director Update: Executive Director Antonio thanked the Board for its vote of confidence, and proceeded to give a brief, silent, PowerPoint report: "8th grade indifference; 73,000 online!"

P. Solicitation of Candidates to Serve as Chair of the Board, 2004-2005: Chair Askew reminded Board members about the requirements for running for next year's Chair of the Board. Second year directors who desire to be nominated for the position shall notify Chair Askew in writing before the January Board meeting of his or her intention to seek that position. Each director nominated for Chair shall provide the Chair with a one or two-page statement of that director's views and strategies relative to the issues which that director believes are of greatest significance to the Board and the Bar.

There being no further business, the meeting was adjourned at approximately 3:00 p.m.

EXHIBIT(S) ATTACHED

- EXHIBIT A: Bylaw Revisions: SB Computer & Technology Section
- EXHIBIT B: Dues Increase: SB Administrative & Public Law Section
- EXHIBIT C: Dues Increase: SB Animal Law Section
- EXHIBIT D: Annual Meeting/Election of Officers Exception: SB Juvenile Law Section
- EXHIBIT E: Bylaw Revisions: SB Construction Law Section
- EXHIBIT F: Bylaw Revisions: SB Insurance Law Section
- EXHIBIT G: Grievance Committee Appointments, 2002-03
- EXHIBIT H: Annual Meeting Resolution Referral (SB Individual Rights & Responsibilities Section)
- EXHIBIT I: Resolution: Supreme Court Justice and Mrs. Craig T. Enoch
- EXHIBIT J: Resolution: 2003 Margaret Brent Honoree Charlye O. Farris
- EXHIBIT K: Resolution: State Bar Past President and Mrs. Travis D. Shelton
- EXHIBIT L: Resolution: SBOT Past President James B. Sales
- EXHIBIT N: Resolution: Texas Young Lawyers Association "Junior Judges"
- EXHIBIT M: Resolution: Dallas Bar Association – Successful Completion of the Belo Mansion Pavilion in the Arts District of Dallas
- EXHIBIT O: Special Projects Department Director Diana Corbin
- EXHIBIT P: Draft: Proposed Revisions to the State Bar Rules
- EXHIBIT Q: Internal Auditor – Montemayor & Associates
- EXHIBIT R: Sentry Management Company (Murphy Davis)
- EXHIBIT S: Murphy Davis & University of North Texas Center for Public Management as Investment Trainers
- EXHIBIT T: Quarterly Investment Report for Quarter Ending May 31, 2003
- EXHIBIT U: Broker List for 2003-2004

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